

**IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN**

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL and REPORTER,)
)
Plaintiff,)
)
v.)
)
ROLAND FROEHLIG, a.k.a. Rollie Froehlig,)
THEODORE HOWES, a.k.a. Ted Howes,)
NATIONAL FULFILLMENT, INC., and)
ENTERTAINMENT AMERICA, INC.,)
)
Defendants.)

No. 33293

JURY DEMAND

**STATE OF TENNESSEE'S MOTION FOR TEMPORARY INJUNCTION
AND ASSET FREEZE**

I. The State of Tennessee ("State"), through its Attorney General and Reporter, Robert E. Cooper, Jr., and on behalf of and at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, moves this Court pursuant to Tenn. Code Ann. § 47-18-2105 of the Tennessee Identity Theft Deterrence Act of 1999 for a statutory injunction temporarily enjoining Defendant Froehlig, Defendant Howes, Defendant National Fulfillment, Inc., and Defendant Entertainment America, Inc. their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this temporary injunction, from engaging, directly or indirectly, in the following acts until an order granting or denying a permanent injunction is entered:

- (A) If the item to be billed is a good, Defendants shall be strictly prohibited from sending consumer credit card information, debit card information, or information of other means of payment to a third party for billing, or billing consumer credit cards, debit cards, or other means of payment themselves, when the Defendants do not have a sample of the actual good and a name and referral phone number for the owner of the business offering the good. The sample product, owner's name, and owner's referral phone number shall at least be distributed to the officer of National Fulfillment who manages the Consumer Care Division from day-to-day and the Vice President of Entertainment America, Inc.
- (B) If the item to be billed is a service (for example a discount prescription drug plan), Defendants shall be strictly prohibited from sending consumer credit card information, debit card information, or information of other means of payment to a third party for billing, or billing consumer credit cards, debit cards, or other means of payment themselves, when the Defendants do not have a sample brochure, application, or other marketing material describing the service to consumers and a referral phone number and the name of the owner of the business offering the service. The sample brochure, application, or other marketing material describing the service to consumers and a referral phone number and name of the owner of the business offering the service shall at least be distributed to the officer who manages the Consumer Care Division at National Fulfillment, Inc. from day-to-day and the Vice President of Entertainment America, Inc.
- (C) Defendants shall be strictly prohibited from sending consumer credit card information, debit card information, or information from other means of payment to a third party for billing, or billing consumer credit cards, debit cards, or other means of payment themselves, when the Defendants have not shipped the good if the Defendants do not have the specific date that consumers were shipped the good or service agreement or the specific date that the consumer ordered the good or agreed to sign up for the service.
- (D) Defendants shall be strictly prohibited from disposing, destroying, concealing, failing to preserve, or discarding any and all business records or personal records relating to the "EmTech" account, this includes, but is not limited to:
- (1) All electronic communications or e-mails, hand written notes, or other correspondence to or from Defendant Froehlig, Defendant Howes, Vicki Martin, Rich Shockley, Jerry Bellante, Becky

Cardiff, Townley Chattman, Diana Birchett, Anna Perry, Darlene Wiley, Norma Jean Stroupe, Cindy Dinwiddie, Melissa Carver, Tammie Turner, Karen Kastens, Sherry Mount, Mary Alice, or Jeanette Page concerning the EmTech account from January 1, 2005 until the present;

(2) All available phone records, phone bills, or phone logs to or from Defendant Howes or Defendant Froehlig's office phone number or their assistants from January 1, 2005 until August 28, 2006;

(3) Any and all copies of the "EmTech," "Emson Products," "Banjo Minnow," "Aloette," "Barbara K," and "Youth Factor" consumer lists, including but not limited to those lists that contain the consumer's name, billing address, shipping address, credit card number, debit card number, expiration date, and date ordered, contained on a compact disc, in an electronic spreadsheet or database, or otherwise;

(4) The Spri exercise band produced by Defendants;

(5) All consumer call reports or call notes concerning the "EmTech" account; and

(6) Any and all saved word processing documents or metadata from these documents referencing "Richard Whitehead" or "Dick Whitehead" whether located at National Fulfillment or on a personal computer.

II. The State further moves that Defendant Froehlig, Defendant Howes, Defendant National Fulfillment, Inc., and Defendant Entertainment America, Inc. their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this temporary injunction, shall affirmatively be required to do the following until an order granting or denying a permanent injunction is entered in this case:

- (A) In the event that Defendants seek to send consumer credit card information, debit card information, or information of other means of payment to a third party for billing, or seek to bill consumer credit cards, debit cards, or other means of payment themselves, when the Defendants

have not shipped the good or service materials themselves, provided that the Defendants also have the specific date that consumers were shipped the good or service materials and the specific date that consumers ordered the good or service, the Defendants shall notify, through counsel, the Attorney General of any such billing at least ten (10) calendar days before of any such billing. Before billing occurs, the Defendants shall provide access to documents to verify the information contained in that account, including specific shipping dates or order dates, to the Attorney General upon request.

ASSET FREEZE

III. In order to preserve funds for consumer restitution, the State of Tennessee moves as follows:

- (A) Defendant Entertainment America, Inc. shall be prohibited from liquidating, encumbering, borrowing against, withdrawing, transferring to any other company or person including National Fulfillment, Inc., or otherwise dissipating the **\$ 34,060.38** of proceeds from the “EmTech” account that remains in Entertainment America, Inc.’s bank account. Further, this sum shall be placed in an escrow account at a bank of the Defendants’ choosing to be held until an order granting or denying restitution for consumers is entered.
- (B) Defendant National Fulfillment, Inc. shall be prohibited from liquidating, encumbering, borrowing against, withdrawing, transferring to any other company or person including Entertainment America, Inc., or otherwise dissipating the sum of **\$ 511,425.62**. Further, this sum shall be placed in an escrow account at a bank of the Defendants’ choosing to be held until an order granting or denying restitution for consumers is entered.

The State moves that the Defendants submit proof that the above sums have been placed in an escrow account within seven (7) business days of any Order entered by this Court pursuant to this Motion.

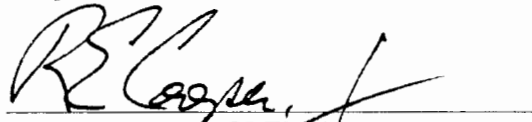
No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-2105(g). The State will pursue all costs and attorneys’ fees associated with this motion after a trial on the merits.

In support of this Motion, the State relies upon the contemporaneously filed

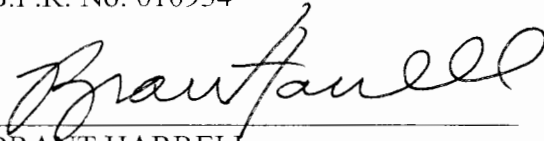
Memorandum of Facts and Law in Support of Motion for Temporary Injunction, the Complaint and the Attachments (and their accompanying Exhibits) made to this Motion. These documents demonstrate that the State has shown a likelihood of success on the merits of its action.

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF FILED
BY THE PLAINTIFF IN THIS CASE.**

Respectfully submitted by:



ROBERT E. COOPER, JR.
Attorney General & Reporter
B.P.R. No. 010934



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Attorneys for Plaintiff, State of Tennessee

CERTIFICATE OF SERVICE

On this the 16th day of February, 2007, I, Brant Harrell, do hereby certify that the foregoing document was served through original process by agreement on at the following address:

David Herbert
Ortale, Kelly, Herbert & Crawford
200 Fourth Avenue, North
Nashville, TN 37219

(Counsel for Defendants National Fulfillment, Inc. Entertainment America, Inc., Roland Froehlig (in his individual and representative capacity), and Ted Howes (in his individual and representative capacity)).

A handwritten signature in cursive script that reads "Brant Harrell". The signature is written in dark ink and is positioned above a horizontal line.

BRANT HARRELL
Assistant Attorney General

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